

Georgia State University College of Law
Reading Room

Georgia Business Court Opinions

6-22-2021

**Ruby Tuesday, Inc. Order Denying Motion to Stay Enforcement of
the Court's March 9, 2021 Order Pending Final Judgment and
Setting Deadline for Payment**

John J. Goger
Senior Judge, Fulton County Superior Court

Follow this and additional works at: <https://readingroom.law.gsu.edu/businesscourt>



Part of the [Law Commons](#)

Institutional Repository Citation

John J. Goger, *Ruby Tuesday, Inc. Order Denying Motion to Stay Enforcement of the Court's March 9, 2021 Order Pending Final Judgment and Setting Deadline for Payment*, Georgia Business Court Opinions 527 (2021)

<https://readingroom.law.gsu.edu/businesscourt/527>

This Court Order is brought to you for free and open access by Reading Room. It has been accepted for inclusion in Georgia Business Court Opinions by an authorized administrator of Reading Room. For more information, please contact gfowke@gsu.edu.

IN THE SUPERIOR COURT OF FULTON COUNTY
BUSINESS CASE DIVISION
STATE OF GEORGIA

RUBY TUESDAY, INC.,

Plaintiff,

v.

CEDE & CO., QUADRE
INVESTMENTS, LLP, LAWRENCE
N. LEBOW, JONATHAN LEBOW,
MIRIAM D. ROTH, POWELL
ANDERSON CAPITAL LP, and
LELAND WYKOFF,

Defendants.

CIVIL ACTION NO.
2018CV304101

**ORDER DENYING MOTION TO STAY ENFORCEMENT OF THE
COURT'S MARCH 9, 2021 ORDER PENDING FINAL JUDGMENT AND
SETTING DEADLINE FOR PAYMENT**

This matter comes before the Court on Motion to Stay Enforcement of the Court's March 9, 2021 Order Pending Final Judgment ("Motion"). Having reviewed the record and considered the written submissions and arguments of counsel, the Court enters the following order.

1. INTRODUCTION

NRD Partners, II, L.P. ("NRD"), a non-party, seeks to stay enforcement of this Court's March 9, 2021 interlocutory order awarding attorneys' fees to Quadre

Investments LP (“Quadre”) for its discovery lapses pending a final judgment so as to allow appellate review before NRD is required to pay the fee award.

2. BACKGROUND

The underlying petition for judicial appraisal was filed by Ruby Tuesday, Inc. (“Ruby Tuesday”) after its 2017 merger. The defendant shareholders, including Quadre, had a long running discovery dispute with Ruby Tuesday and NRD, a party that was related to the entity that acquired ownership of Ruby Tuesday. (See generally, Order on Appl. for Att’y Fees, entered March 9, 2021, pp. 2-10.) Ruby Tuesday and NRD were represented by the same counsel and jointly defended the discovery motions. After numerous hearings, the Court declined to impose the most serious discovery sanctions against NRD or Ruby Tuesday but did find an award of fees was merited. (Id., p. 6.) Before a formal order could be entered, Ruby Tuesday filed for bankruptcy protection. Defendant Quadre, one of the parties who received the fee award, subsequently sought to enforce it solely against non-party NRD who was not subject to the bankruptcy stay. (Id.)

On March 3, 2021, the Court conducted a hearing to consider evidence and argument. In addition to contesting the reasonable amount of fees sought by Quadre, NRD argued fees could not properly be assessed against a non-party. It asserted the express language of O.C.G.A § 9-11-37(b)(2), the operative statute, only allows fee awards against parties and/or their counsel. On March 9, 2021, this Court granted

Quadre's Application for Attorney's Fees against NRD, awarding \$108,500.47 in fees. This Court focused on the interwoven nature of O.C.G.A. §§ 9-11-34, 9-11-37(a)(4)(A) and (b)(2) as supporting the extension O.C.G.A. § 9-11-37's enforcement provisions to non-parties. (Id., pp. 10-13.)

On March 18, 2021, NRD filed a motion for entry of final judgment as to NRD or, in the alternative, for certification of the March 9, 2021 order for immediate review in the appellate court. This Court certified the order for appellate review that same day. On April 26, 2021, the Court of Appeals denied NRD's Application for Interlocutory Appeal. (Motion, Ex. 1.) On April 27, 2021, Quadre's counsel sent a demand letter seeking payment of the fee award. (Motion, Ex. 2.) On May 4, 2021, NRD filed the instant Motion, claiming the "demand was premature" because this Court "has not yet entered a final judgment." (Motion, p. 1.) NRD seeks a stay that would allow for appellate review of the fee award before NRD's payment. Specifically, NRD requests such an enforcement stay continue until the Ruby Tuesday bankruptcy stay was lifted, allowing the entry of a final judgment in this case which would then allow NRD to appeal. NRD suggests the requested enforcement stay will be short, based on the status of the Ruby Tuesday bankruptcy proceedings. (Id.) Quadre opposes the enforcement stay and asks the Court to set a 10-day deadline for payment with a threat of a show cause contempt hearing should

NRD fail to comply. (Response, p. 5.) Quadre also disagrees with NRD's assessment regarding the anticipated length of the Ruby Tuesday bankruptcy stay.

3. STANDARD OF REVIEW

In the recent case of Jhun v. Imagine Castle, LLC, A20A1724 (Ga. App., March 2, 2021), the Georgia Court of Appeals cited the long-standing Georgia law upholding a trial court's wide ability to issue litigation stays.

The power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants. How this can best be done calls for the exercise of judgment, which must weigh competing interests and maintain an even balance. We review a trial court's decision to grant a motion to stay for abuse of discretion.

Here, neither party questions the Court's ability to grant a stay. Their arguments are focused on the wisdom of entering or not entering one.

4. ANALYSIS

In support of its requested stay, NRD first suggests the stay will not be long. (Motion, p. 1.)¹ Second, NRD argues it would inappropriately shoulder the risk of loss if forced to pay the fee award now. Specifically, NRD contends that if it is forced to pay the fee award now, it would bear the burden, expense, and potential

¹ The parties have provided certain information about the status of the bankruptcy case in their pleadings and in various emails sent to the Court subsequent to their pleadings. The Court denies NRD's request to further brief the status of the bankruptcy proceeding. The length of requested enforcement stay is not central to the Court's decision not to grant the stay. Accordingly, the Court finds the subject does not merit the additional time, effort, and expense of additional briefing.

collection risks of having to recover its funds from Quadre should the fee award be reversed on appeal. (Motion, p. 3.)

In opposition, Quadre disagrees with NRD that the demand for payment is “premature.” (Motion, p. 1.) It asserts NRD has the obligation to obey the interlocutory fee award despite NRD’s contentions that it was erroneously entered. Quadre cites Orkin Exterminating Co., Inc. v. McIntosh, 215 Ga. App. 587, disapproved on other grounds Chrysler Grp., LLC v. Walden, 303 Ga. 358 (2018) where a party sanctioned with fees for a discovery violation argued it could postpone payment of the fee award until final judgment. The Court of Appeals found the position was,

unsupported by the Code, the case law and, indeed, by common sense. As the trial court observed, obedience to interlocutory orders, especially those governing discovery and trial management, is essential to the functioning of the judicial system.

Id. at 588. With regard to its enforcement, the appellate court determined contempt was the appropriate remedy.

Although an interlocutory order is not a judgment and therefore cannot be enforced by execution, the administration of justice requires that courts have the power to enforce their interlocutory orders and decrees by contempt proceedings. . . . [The sanctioned party] was bound to obey the order, even if erroneous, and thus was properly held in contempt.

Id. (Citations omitted). Accordingly, Quadre urges the Court to deny the requested stay and schedule a contempt hearing should NRD fail to pay the fee award within

a reasonable time thereafter. (Response, p. 5.) Alternatively, Quadre requests the Court require NRD to post a bond securing the fee award or pay the fee award into the registry of the Court.

Here, the Court agrees with Quadre that obedience to interlocutory discovery orders is a bedrock concept of our court system and necessary for the orderly progression of litigation matters. Georgia law clearly provides that orders granting fee awards based upon the failure to comply with a discovery order shall be paid while the case is proceeding and not delayed until the entry of a final order. Orkin. Further, the Court does not find good cause to stay the enforcement of its fee award. Jhun. The underlying discovery dispute extended over one year based primarily on NRD's failure to comply with its discovery obligations. Responsive documents that NRD could have been easily located were only produced after numerous requests and hearings. Based on its conduct during the discovery dispute, the Court does not find that NRD should be granted the requested delay in the enforcement of its sanction. Moreover, by entering a certificate of immediate review, this Court provided the Court of Appeals with the opportunity to review the fee award on an interlocutory basis which opportunity the appellate court declined.

5. CONCLUSION

In light of the foregoing, it is hereby ORDERED AND ADJUDGED that NRD's Motion to Stay Enforcement of the Court's March 9, 2021 Order Pending Final Judgment is DENIED.

It is further ORDERED that *no later than two weeks* after the entry of this order, NRD shall either pay Quadre the full principal amount of the \$108,500.47 fee award plus any interest that has accrued since March 9, 2021 or pay such fee award and accrued interest directly into the registry of the Court where the Clerk shall hold the money in an interest-bearing account pending either the entry of a final judgment and any corresponding appellate review.

SO ORDERED this 22nd day of June, 2021.


JOHN J. GOGER, SENIOR JUDGE
Fulton County Superior Court
Business Case Division
Atlanta Judicial Circuit

Filed and Served Electronically via Odyssey eFileGA

Attorneys for Plaintiff	Attorneys for Defendants
<p>Stanford G. Wilson Brent D. Wasser ELARBEE, THOMPSON, SAPP & WILSON, LLP 800 International Tower 229 Peachtree Street, N.E. Atlanta, Georgia 30303 Tel: (404) 659-6700 Fax: (404) 222-9718</p>	<p>Thomas T. Tate R. Matthew Reeves Tyler A. Dillard ANDERSON, TATE, & CARR, P.C. 1960 Satellite Boulevard, Ste. 4000 Duluth, Georgia 30097 Tel: (770) 822-0900 ttate@atclawfirm.com</p>

swilson@elarbeethompson.com
wasser@elarbeethompson.com

Frederic A. Cohen
Aaron-Michael Sapp
Allison R. Grow*

CHENG COHEN LLC
363 W. Erie Street, Suite 500
Chicago, Illinois 60654
Tel: (312) 243-1701
fredric.cohen@chengcohen.com
asapp@chengcohen.com
allison.grow@chengcohen.com

Counsel for Plaintiff Ruby Tuesday, Inc. and Non-Party NRD Partners II, L.P.

mreeves@atclawfirm.com
tdillard@atclawfirm.com

Counsel for Powell Anderson Capital LP and Quadre Investments, LP,

Richard K. Strickland

Emily R. Hancock
BROWN READDICK BUMGARTNER CARTER
STRICKLAND & WATKINS LLP

5 Glynn Avenue (31520)
Post Office Box 220
Brunswick, Georgia 31521
Tel: (912) 264-8544
Fax: (912) 264-9667

rstrickland@brbcsw.com
ehancock@brbcsw.com

Counsel for Defendant Cede & Co.

Leland Wykoff

Post Office box 444
Pigeon Forge, Tennessee 37868
lelandwykoff@msn.com

Defendant, Pro Se

Jonathan Lebow

4625 Forest Ave., SE
Mercer Island, Washington 98040
jonathan.lebow@gmail.com

Defendant, Pro Se

Miriam D. Roth

4625 Forest Ave., SE
Mercer Island, Washington 98040
Defendant, Pro Se

Lawrence Lebow

3748 Woodlane Road
Gainesville, Georgia 30506
Defendant, Pro Se